

1 IN THE UNITED STATES DISTRICT COURT

2 FOR THE NORTHERN DISTRICT OF CALIFORNIA

3

4 TROY J. ANDERSON,

No. C 10-05557 CW (PR)

5 Plaintiff,

ORDER OF DISMISSAL;  
GRANTING LEAVE TO PROCEED  
6 IN FORMA PAUPERIS

7 CALIFORNIA DEPARTMENT OF  
CORRECTIONS AND REHABILITATION,  
8 et al.,

9 Defendants.

10 \_\_\_\_\_ /  
11  
12 Troy J. Anderson is incarcerated at the Martinez Detention  
13 Facility. At the time he filed the instant action, he had not been  
14 convicted and was involved in ongoing state criminal proceedings.  
15 Although Anderson did not designate this action as either a civil  
16 rights action or a habeas corpus petition, it was filed by the  
17 clerk as a civil rights action. Because the type of relief  
18 Anderson seeks, however, pertains to the legality of his ongoing  
19 criminal proceedings, the Court construes Anderson's pleadings as a  
20 petition for a writ of habeas corpus. See Skinner v. Switzer, 131  
21 S. Ct. 1289, 1293 (2011)(to the extent a prisoner maintains he is  
22 entitled to "immediate or speedier release" from confinement, such  
23 a claim may be asserted only in a petition for a writ of habeas  
24 corpus).

25 Anderson's allegations are not easy to decipher, but he  
26 appears to claim that his arrest was unlawful, the prosecution and  
27 police department are withholding exculpatory evidence from him and  
28 the judge presiding over his criminal proceedings has not allowed

1 him to represent himself adequately in propria persona. He does  
2 not state that he has raised his claim in any other court, and asks  
3 this Court to intervene in his ongoing state proceedings.

4 This Court has authority to entertain a petition for a writ of  
5 habeas corpus by a person in custody, but not yet convicted or  
6 sentenced. See McNeely v. Blanas, 336 F.3d 822, 824 n.1 (9th Cir.  
7 2003); Application of Floyd, 413 F. Supp. 574, 576 (D. Nev. 1976).  
8 Such a person is not in custody "pursuant to the judgment of a  
9 state court," 28 U.S.C. § 2254, and therefore brings his petition  
10 under 28 U.S.C. § 2241(c)(3). McNeely, 336 F.3d at 824 n.1.  
11 Although there is no exhaustion requirement for a petition brought  
12 under 28 U.S.C. § 2241(c)(3), principles of federalism and comity  
13 require that this Court abstain until all state criminal  
14 proceedings are completed and the petitioner exhausts available  
15 judicial state remedies, unless special circumstances warranting  
16 federal intervention prior to a state criminal trial can be found.  
17 See Carden v. Montana, 626 F.2d 82, 83-84 & n.1 (9th Cir.), cert.  
18 denied, 449 U.S. 1014 (1980); see also United States ex rel.  
19 Goodman v. Kehl, 456 F.2d 863, 869 (2d Cir. 1972) (pretrial  
20 detainees must first exhaust state remedies).

21 Here, Anderson alleges no special circumstances warranting  
22 this Court's intervention in his ongoing state proceedings. Each  
23 of his claims is amenable to state court review through available  
24 state procedures. Accordingly, the Court must abstain from  
25 addressing the instant petition until Anderson's state criminal  
26 proceedings are concluded.

27 Additionally, to the extent Anderson's pleadings attempt to

1 raise a claim for damages based on the alleged violations that form  
2 the basis of his request for habeas relief, no such claim is  
3 available to him at this time.

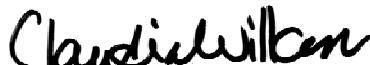
4 In Heck v. Humphrey, 512 U.S. 477, 486-87 (1994), the United  
5 States Supreme Court held that in order to state a claim for  
6 damages for an allegedly unconstitutional conviction or term of  
7 imprisonment, or for other harm caused by actions whose  
8 unlawfulness would render a conviction or sentence invalid, an  
9 individual asserting a violation of 42 U.S.C. § 1983 must prove  
10 that the conviction or sentence has been reversed or declared  
11 invalid. See id. at 486-87. A claim for damages bearing such  
12 relationship to a conviction or sentence that has not been so  
13 invalidated is not cognizable under § 1983. Id. at 487. Although  
14 a claim for damages will not be barred under Heck if the plaintiff  
15 has not yet been convicted, such claim should not go forward if  
16 criminal proceedings are still pending. See Wallace v. Kato, 127  
17 S. Ct. 1091, 1098 (2007). Accordingly, Anderson cannot seek  
18 damages for alleged violations pertaining to his conviction unless  
19 and until he is convicted and subsequently has his conviction set  
20 aside.

21 For the foregoing reasons, the instant action is DISMISSED  
22 without prejudice to Anderson's filing a federal habeas petition  
23 challenging the validity of his conviction once he has exhausted  
24 state remedies, and filing a civil rights action for damages in  
25  
26  
27

1 accordance with Heck v. Humphrey.<sup>1</sup> Leave to proceed in forma  
2 pauperis is GRANTED (Docket no. 13). The Clerk of Court shall  
3 enter judgment and close the file.

4 IT IS SO ORDERED.

5 DATED: 8/10/2011



6 CLAUDIA WILKEN

7 United States District Judge

24 \_\_\_\_\_  
25 <sup>1</sup>Individuals in state custody who wish to challenge in federal  
26 habeas proceedings either the fact or length of their confinement  
27 are first required to exhaust state judicial remedies by presenting  
on the merits of each and every claim they seek to raise in federal  
court. See 28 U.S.C. § 2254(b), (c)); Rose v. Lundy, 455 U.S. 509,  
515-16 (1982).

1  
2                   UNITED STATES DISTRICT COURT  
3                   FOR THE  
4                   NORTHERN DISTRICT OF CALIFORNIA

5                   ANDERSON et al,

6                   Plaintiff,

7                   v.

8                   DEPARTMENT OF CORRECTIONS AND  
9                   REHABILITATION et al,

10                  Defendant.

11                  Case Number: CV10-05557 CW

12                  **CERTIFICATE OF SERVICE**

13                  I, the undersigned, hereby certify that I am an employee in the Office of the Clerk, U.S. District  
14                  Court, Northern District of California.

15                  That on August 10, 2011, I SERVED a true and correct copy(ies) of the attached, by placing said  
16                  copy(ies) in a postage paid envelope addressed to the person(s) hereinafter listed, by depositing said  
17                  envelope in the U.S. Mail, or by placing said copy(ies) into an inter-office delivery receptacle  
18                  located in the Clerk's office.

19                  Troy J. Anderson  
20                  MDF  
21                  CC10CL83N  
22                  901 Court Street  
23                  Martinez, CA 94553

24                  Dated: August 10, 2011

25                  Richard W. Wieking, Clerk  
26                  By: Nikki Riley, Deputy Clerk